

Testimony of the
Indian Arts and Crafts Association
Presented by Tony Eriacho Jr.

Submitted to United States Senate
Committee on Indian Affairs
Oversight Hearing on the
Implementation of the 1990 Indian Arts and Crafts Act
Public law 101-644

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Greetings to members of this Congressional committee hearing:

My name is Tony Eriacho Jr. I am an enrolled member of the Zuni Tribe, in western New Mexico. Our tribe is one of the major producers of Native American Indian arts & crafts. Zuni arts & crafts are known, collected and traded all over the world. I am one of a few Native American owned businesses that buys and sells authentic Indian Art. The name of my business is Eriacho Arts and Crafts. We carry solely Zuni made Indian Arts & Crafts. My wife Ola and I also make Zuni inlay jewelry and sell our own work. I am a member of the Indian Arts & Crafts Association (IACA) with dual memberships as an artist and also as a wholesale/retail member. For the year 2000 I was elected Artist/Craftsperson representative for the Indian Arts & Crafts Association (IACA) by the membership. And currently I am Vice-President of the Council for Indigenous Arts & Culture (CIAC). At the local level I am also President of a local artist organization called the Zuni Cultural Arts Council (ZCAC). Currently the IACA is the only national trade association within the Indian Art industry who's primary purpose is to promote native American arts and crafts throughout the trade. Its (IACA) membership represents a broad membership of dealers, collectors, museums and artisans. The IACA sponsors two annual wholesale trade shows of Indian Art.

In November of 1999, the Zuni Cultural Arts Council did a needs assessment study with the help of the CIAC. What that study found was that in the community of Zuni, the majority of my people rely on the sale of their arts & crafts as a primary form of income. The study indicated that up to 85% of the working population rely on arts & crafts sales as either a primary or secondary form of income. Most of the artists that produce their work do not know the full picture of how the Indian art industry is structured. All they know is that what they are currently making now is getting harder and harder to sell, and sometimes is sold for less than what was received just 10 years ago. Several people in the community have evidence that their work is being copied overseas without their permission. In a number of instances we have been able to show them imported replicas of their work. This practice of overseas manufacturing is taking the livelihood away from these artisans. When artists see actual samples of these copies, they understand why it is getting harder and harder for them to sell their work. This puts pressure on the local governments to try and find a solution to this problem. My personal inquiries to the Zuni Tribal Council found that the issue of the lack of enforcement of the 1990 act is a concern to them. The tribal administrations' opinion is that in light of the purpose of the Act, the Act would be better

served where there is better enforcement capability, such as in the Office of the Inspector General, Dept. of Treasury/US Customs, Dept of Justice, etc.

Historically we know that since the 1930's there has been the temptation by unscrupulous dealers to manufacture and produce bogus look-alikes. Beginning in 1935 the development of the Indian Arts And Crafts Board was developed in part to combat these practices. Most recently (1990) this issue of misrepresentation was to be addressed by the IACB. Since then, there has been no difficulty to demonstrate deterrent to those who misrepresent non-Indian art as Indian Handmade. Very little enforcement of the current 1990 Indian Arts and Crafts Act has taken place and there needs to be more involvement from the IACB if in fact it is their objective to enforce the 1990 provisions of the act.

Examples of misrepresentations of Indian Art can be seen at many Native American events such as Pow Wow's, some juried Indian Art Shows and stores in general. There is no monitoring of these events to survey the amount of fraud taking place. Promoters of these events do not have a resource to call upon to help them enforce their rules. Also, these event promoters do not know how to interpret the law. No one knows the difference between imported copies or real Indian art. So promoters are under the impression that their vendors or artist know about the law.

In 1998 under the administration of New Mexico Attorney General Tom Udall, the IACA and the CIAC were able to gain a special appropriation to address the issue of consumer fraud and misrepresentation of imported product as Indian Made. Unfortunately, the summer that the appropriations were made available elections were taking place. By the end of the year, of 70 potential cases that were investigated, only 13 cases were deemed serious enough to be prosecutable according to the incoming Attorney General Patricia Madrid. So as a result, of these 13 cases, 7 cases were settled. Although the intent was to prosecute these cases as criminal, these cases were reclassified as civil cases and settled for fines of less than \$ 10,000. This is not the best way to help enforce the act. Artist that were involved in these cases that were supposed to go to court were willing to testify to make an impact for the act. But they were disappointed. For the longest time Native American Indians (artists) feel that they have been given the short end of the stick. How can the act encourage involvement of artisans, if this is the result?

The 1990 Indian Arts & Crafts Act is a piece of legislation that was supposed to strengthen the act passed in 1935. Formally, the IACA and CIAC are in support of this legislation and believe that it can be utilized in a positive manner. In Indian communities, enforcement of the Act has become a joke. It is like a paper tiger with no teeth. It looks good on paper, but there is no one to enforce the Act. An example of how the act can be effective is:

- To provide educational displays at major Native American events, so it educates the buyers and collectors of Indian Art as well as the promoters of these events.
- Make promoters aware of the resource and responsibilities available to them regarding complying with the Act. This information may be provided through the IACB or through such organizations as the IACA or the CIAC.
- Empower an agency to do something instead of doing lip service.

- Board membership of the IACB need to include Native Artisans and Natives who are deeply involved in the Indian Art industry to effectively enforce and monitor misrepresentations.
- US Customs needs to be educated so that they become more aware of their responsibilities to enforce the indelible marking rule (19 CFR sec.134). The peel off stickers need to be discontinued.
- There are no experts to speak of in the IACB who know the difference between real or fake Indian Art. There needs to be support from IACB / and other government agencies in support of our Tribal Certification Trademark project efforts. Ownership and administration of the Tribal Certification Mark needs to be the responsibility of and sole control of the Indian Nation involved. However, Federal and state Governments can help support the trademark's administrative authority financially and through education.
- The incorporation of some type of certification mark provision to the 1990 Act should also be considered as part of a way to strengthen and clarify the act.

IACA believes that an intelligent plan can be devised that can impact the market with minimal new grant resources. It is the desire of the IACA to contribute to an effective solution by working hand in hand with the Indian Arts and Crafts Board and the Federal government. IACA is currently attempting to raise funds to implement the following activities:

- (1) IACA has an internal enforcement, certification process and logo for its members that it intends to market and promote to the general public so that the public can have assurance that IACA members are ethical.
- (2) IACA is currently working with tribes with another organization, CIAC to assist them in the development of tribal trademarks that can be licensed to tribal artist.
- (3) IACA is seeking resources to educate Indian artists about how to protect themselves, build a case and prosecute people who copy their work. Tribal trademarks will facilitate this process.
- (4) IACA is exploring a working relationship with a group of lawyers with considerable expertise in this area that have indicated their interest in forming an alliance with our organization to provide legal counsel on a contingency basis for cases involving fraud, misrepresentations or copyright violation of Indian art.
- (5) IACA is exploring working with our own legal counsel and would like to work with the IACB to develop cases and assist in prosecution. At the same time, IACA believes that cases must be developed and selected with great care so that it is not abused and the most flagrant violators are prosecuted. IACA also believes that these cases should be handled with a minimum of publicity, and even though the law allows going after people who unknowingly misrepresent Indian art this would be a mistake. We do not want people who sell Indian art to be afraid unless they knowingly misrepresent products in order to profit thereby.

There are many more people in the Indian art business who represent Indian Art correctly to the best of their knowledge, than who don't. Substantial impact can be made by going after a relatively few number of people. IACA intends to take advantage of this trip to Washington to discuss the initiation of a constructive working relationship with IACB based upon the above plans.